

No. 12719

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IN THE  
United States  
Court of Appeals  
FOR THE NINTH CIRCUIT

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UNITED TRUCK LINES, INC., a Corporation,  
*Appellant.*

VS.

INTERSTATE COMMERCE COMMISSION,  
*Appellee*

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*Appellant's Opening Brief*

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*Upon Appeal from the District Court of the United States  
for the Eastern District of Washington  
Northern Division*

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## JURISDICTION

This action was brought by the Appellee, the Interstate Commerce commission, hereinafter called the Commission, against Appellant, United Truck Lines, Inc., the United Truck Lines, Inc., a corporation engaged in the transportation of property for compensation as a common carrier in interstate commerce by motor vehicle on public highways between points and places in the State and the Eastern District of Washington, and within the jurisdiction of this District Court, and is subject to the provisions of Part II of the Interstate Commerce Act (49 U.S.C. Chapter 8). The corporation is and was a citizen and resident of the State of Washington. Appellant hereinafter called United. The action instituted by the Commission against the United was because of the operations by United in traversing U. S. Highway No. 30, from Boise, Idaho to Pasco, Washington.

The controversy was therefore, a controversy which at the time of the commencement of this action, was and still is, between the Interstate Commerce Commission as Appellee, and a citizen of the State of Washington as Appellant. On a certificate issued by the Commission to the United, there involves the interpretation of the authority to operate under said certificate.

Jurisdiction of the District Court existed under provisions of Section 204 (a) and Section 222 (b) of Part II, of the Interstate Commerce Act (Title 49, U.S. Code) Sections 304 (a) and 322 (b) and under the general laws and rules relative to suits in equity arising under the constitution and laws

of United States. The appeal to this court is from the Order and Judgment for permanent injunction decreeing that the Appellant herein be permanently enjoined and restrained, from on and after 12:00 noon on the 20th day of September, 1950 from, in any manner, by and devise, directly or indirectly, from transporting property for compensation in interstate commerce by motor vehicle on public highway designated as U. S. No. 30, between Boise, Idaho, and Pasco, Washington, and the further order that Appellee have its costs herein incurred, dated on the 20th day of September, 1950. Notice of Appeal was filed in the office of the Clerk of the District Court on the 20th day of September, 1950, and jurisdiction is believed to exist under Section 225 (a) and (d) Title 28 U.S.C.A. and (d) Title 28 Section 225 (a) and (d) Title 28 U.S.C.A., Judicial Code, Section 128 amended.



## STATEMENT OF THE CASE

The material facts of this case are not in dispute and the issue involved is comparatively clear.

On the 27th day of March, 1944, the Interstate Commerce Commission issued to the Appellant herein, a certificate of Public Convenience and Necessity being MC 7746 (Tr. 14, 15, 16, 17, 18, 19, 20, 21), wherein the Appellant, among other points and places, was authorized to serve Pasco, Washington in Benton County as a intermediate point on its regular route operation between Spokane and Portland (TR. 17).

On the 25th day of February, 1948, the Interstate Commerce Commission issued to the Appellant herein, a certificate of public convenience and necessity, being No. MC 7746 Sub 18, wherein Appellant was authorized to serve between Spokane and Boise over specified routes serving certain intermediate points.

On the 18th day of April, 1949, the Interstate Commerce Commission issued to the Appellant herein, a certificate of public convenience and necessity, being No. MC 7746 Sub 22, which reads as follows:

General Commodities

except those of unusual value, dangerous explosives, household goods as defined in Practice of Motor Carriers of Household Goods, 17 M.C.C. 467, Commodities in bulk, and commodities requiring special equipment.

Service is authorized to and from points in Grant, Lincoln, Franklin, Adams and Benton Counties, Wash., as intermediate and off-route points in connection with

said carrier's otherwise authorized regular-route *operations*.

The authority herein granted to the extent it duplicates any heretofore granted to said carrier shall not be construed as conferring more than one operating right.

And it is Further Ordered, and is made a condition of this certificate that the holder thereof shall render reasonably and continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate.

While the commodities are restricted, there is no restriction on the services to be performed under the certificate and no restrictions whatsoever, which prohibit the holder from transversing any route from his regular route operations, to and from the points and places in the five counties, nor is there any limitation as to the distance the holder of said certificate may operate from his regular route operations, to points and places in the five counties as off-route points.

Appellant in compliance with the conditions of said certificate commenced operating from Boise, Idaho to Fruitland, Washington, and deviating from Fruitland over U. S. Highway No. 30, to Pasco, Washington, as off-route point in Benton County served in conjunction with its operations, namely, Spokane to Boise, No. MC 7746 Sub 18 and continued to render such service under and by virtue of MC 7746 Sub. 22.

The Commission filed a Summons and Complaint on the 28th day of February, 1950, in the District Court, Eastern

District of Washington, Northern Division, for an order permanently enjoining and restraining the Appellant from using U. S. Highway No. 30, to which complaint the Appellant made answer and entered an affirmative defense, which was replied to by the Commission.

That on June 12, 1950, the Commission filed a Motion for Preliminary Injunction with the United States District Court for the Eastern District of Washington, Northern Division, which Motion came on for hearing the 7th day of August and was continued until pre-trial conference, which was held on September 6, 1950, that thereafter on the 8th day of August, the Commission filed for an Order for pre-trial conference, as provided for under rule 16, which conference was held in conjunction with the Complaint of the Appellee, and the answer and affirmative defense of the Appellant; that the court entered an order on the 20th day of September, 1950 permanently enjoining and restraining the Appellant from operating by motor vehicle in interstate commerce for compensation over U. S. Highway No. 30, between Boise, Idaho and Pasco, Washington.

## SPECIFICATIONS OF ERROR

1. The District Court erred in granting to Plaintiff, a Order and Judgment for permanent injunction as prayed for in Plaintiff's Complaint, which order was signed and filed September 20, 1950.

2. The District Court erred in denying Defendants prayer in its answer asking that the Plaintiff's Complaint be dismissed and that its Order of Injunction for restraint be denied.

## ARGUMENT

Specifications of error 1 deals with what Appellant conceives to be the wrongful interpretation of certificate MC 7746 Sub 22, held by the Appellant.

## I

## CERTIFICATE NOT RESTRICTED

The District Court construed the certificate as not authorizing the Appellant to transverse U. S. Highway No. 30, from Boise, Idaho to Pasco, Washington, such restriction is not substantiated by Section 208 (a) of Part II of the Interstate Commerce Act, U. S. Code, Title 49, Section 308, and reads as follows:

Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under Secion 204 (a) (1) and (6).

The District Court in effect construed certificate MC 7746 Sub 22 to one with limitations rather than one unrestricted, as can readily be concluded from the Section above quoted, which governs the terms and conditions of a certificate. It

seems to the Appellant, therefore, that if the Court is to hold the operations by the Appellant over U. S. Highway 30 illegal, there must be read into the certificate, a restriction that service, to and from, Appellant's otherwise authorized regular route operations embodies only the operations from Spokane to Portland. The Appellant believes this is reading into the certificate something which does not appear on its face, and, in fact, cannot result from a reasonable interpretation of the language used.

There is, perhaps, another way of considering the certificate that may make Appellant's position a little clearer. Certificate MC 7746 Sub 18, authorizing Appellant to serve from Spokane to Boise, over specified highways, with certain restrictions, was issued on the 25th day of February, 1948, and more than a year subsequent thereto, MC 7746 Sub 22 was issued, to-wit; on the 18th day of April, 1949, and authorizes service to and from the points and places in the five counties named in the certificate, as Off Route and intermediate points. If a shipment originates in Boise, Idaho destined for Pasco, Washington, which point would be, and is, an Off Route point from the Spokane-Boise operation, Appellant could, without question, move the shipment over U. S. Highway 30 under MC7746 Sub 22 certificate. But if he cannot transport the shipment over that route as provided in the certificate, he is being denied rights to operate under the certificate that has been granted with no restrictions of any kind whatsoever as to the route he must traverse. The Commission certainly has no right in 1950, in the absence of inadvertence or mistake, to restrict the operation of a certificate issued in 1949.

SMITH BROS. REVOCATION OF ORDER 33 M. C. C. 465.

## II

## NO COMPETENT PROOF OF ILLEGAL OPERATION

Specification of Error 1, further deals with what appellant conceives to be error of the Trial Court in holding that the Commission had produced competent proof of illegal operation over Highway U. S. 30 from Boise, Idaho to Pasco, Washington. The commission did not offer or produce any rule of the Commission setting out how far a carrier may travel from his regular route operation to serve a point designated as an off route point from the regular route. The reason for the commission to offer or produce such evidence is quite clear. THERE IS NO SUCH RULE ADOPTED BY THE COMMISSION. EVERY APPLICATION IS TREATED SEPARATELY AND INDIVIDUALLY AS TO THE POINTS AND PLACES TO BE SERVED.

The commission did cite three decisions to the Court in support of its complaint.

(Tr. 48) a, Los Angeles Motor Express, Inc., decided July 2, 1940 (M. C. C. 141)

b, System Arizona Express Service, Inc., decided January 14, 1938. (4 M. C. C. 129)

Dixie Freight Lines, Inc., decided May 28, 1941. (29 M. C. C. 406) (2 Federal Carriers Cases 7799)

Obviously the Trial Court relied upon these cases to support the Order and Judgment entered against the appellant. However, the cases cited, do not, define and interpret the term "Off route" points and limitations of service thereto from authorized regular route operations of carriers. The decisions fail to establish the specific distances. Each case



considered separately as to what the distance on "Off route points". The commission did give reason for denying the application to serve certain points as "Off Route" as being too far distant from the regular route of the applicant. HOWEVER, it cannot be accepted that the cases cited tend in any way to interpret the rights of appellant to operate under Mc 7746 Sub 22. The above cited cases were denied in part, particularly, as to the certain off route points.

IN THE INSTANT CASE the certificate was GRANTED.

## RULES OF COMMISSION GOVERNING ROUTES TO TERRITORIES

Item 10. Routes to Territories.

Item 6 & 10 Routes to Territories

Item 10.

Serving territorially described off-route point.

Where off route points are described as "those within 35 miles of Blank City" the carrier may leave the regular route before the route enters that area if that is the most direct available means of reaching points therein to be served.

It is not necessary that the diversion from regular route be made at an authorized intermediate point.

Having reached the area the carrier may proceed from one point to another therein without returning to its regular route each time.

Return to the regular route need not be over the same highway as the entry, but may be by any direct means from the last point served in the area.

L-21277 March 30, 1949



It can readily be concluded from the above Rule of the commission above set out that the decisions in the cases cited by the commission are inconsistent with the Rule adopted March 30, 1949, also by Rule, as follows:

Item "6". Service only from appurtenant Route.

An off-route point may be served only from the route to which it is appurtenant—that is the route in the certificate in connection with which point is granted. A carrier after disgressing from a route to serve an off-route point must return to that route.

It may not go to another route unless authorized to serve the off-route point from both sides.

(Dixie 29 M. C. C. 406)

The wording of the certificate Mc7746-Sub 22 certainly grants to the appellant the authority to serve the territory described as the five counties from both sides.

#### WORDING OF CERTIFICATE MUST GOVERN

Specifications of Error 2 deal with what the appellant conceives to be error of the Trial Court in not granting appellant's prayer for dismissal of the Commission's Complaint. The wording of the certificate "Service is authorized to and from". The terms "to and from" must be accepted in the common usage which reason and sense entitles them under circumstances of case. They can only have one meaning insofar as this case is concerned, namely to haul to any of the points in the five counties and from any of the points in the five counties "as intermediate and off-route points in connection with said carrier's otherwise regular-route

operations. The word "operations" can only be accepted as including all of the operations of the appellant. It is not restricted to one, two or three, but to all operations.

The certificate mentions no specified route or routes that appellant must traverse to serve the points. In the opinion of the appellant it can only be construed to authorize service to the points and places in the five counties as off-routes over whatever route is the most practical and shortest in the operations as a carrier in rendering services from the territory that is authorized to serve by virtue of his certificates under Mc7746 and the subs thereto.

#### OPERATION NOT OVER SPECIFIED ROUTES

IN CRESCENT EXPRESS LINES -V- U.S.D.C.N.Y., 49  
F. Supp. 92, 94.

"Operations not over specified routes" were operations within a defined territory not upon regular routes or between fixed termini.

The appellant contends that the wording of the certificate Sub 22 sets out all points and places in his regular route operations as the territory from which he is authorized to serve from, to points and places in the five counties named in the certificate. However viewed this certificate is unrestricted as to the routes over which the appellant must traverse to serve said points, and the miles it can travel in rendering such service, so long as it is in connection with its regular route operations.

## CONCLUSION

The District Court should of granted appellant's prayer for a dismissal of the complaint either on the ground that the Commission failed to establish that there was an illegal operation or that the wording of the certificate held by appellant granted it authority to operate over U. S. Highway 30 from Boise, Idaho to Pasco, Washington, as an off-route point in Benton County, Washington.

*Respectfully submitted,*

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